

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY
LITIGATION**

MDL NO. 2740

**THIS DOCUMENT RELATES TO:
ALL CASES**

SECTION "N" (5)

PRETRIAL ORDER NO. 61
[Order Dismissing Count Two and Count Eight of the Master Long Form Complaint]

On August 30, 2017, the Court held oral argument on Defendants' Motion to Dismiss Plaintiffs' Master Long Form Complaint (Rec. Doc. 489). At the conclusion of the hearing, the Court denied Defendants' motion with respect to Count One and Counts Three through Seven of Plaintiffs' First Amended Master Long Form Complaint.¹ *See* Rec. Doc. 784. In addition, the Court ordered that, with respect to Counts Two and Eight, which allege strict liability and breach of express warranty, respectively, Plaintiffs submit supplemental briefing or an Amended Master Long Form Complaint to the Court within fourteen days of the Court's ruling, clearly identifying what express statements or language constitutes the alleged misrepresentation of warranty. *See id.*

In response, Plaintiffs' Liaison Counsel advised the Court via email, attached hereto as "Exhibit A," that the Plaintiffs' Steering Committee ("PSC") elected not to file supplemental briefing or an amendment related to the allegations supporting Counts Two and Eight in the First

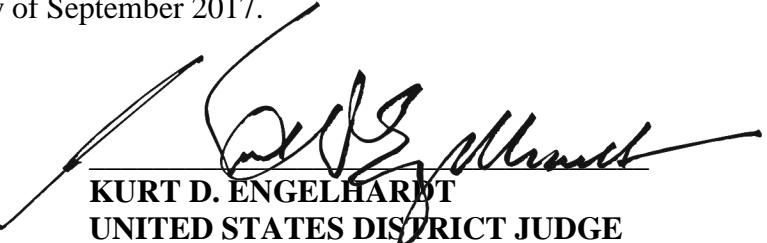
¹ Defendants filed the motion to dismiss in response to Plaintiffs' original Master Long Form Complaint (Rec. Doc. 312), filed on March 31, 2017. However, on July 25, 2017, Plaintiffs filed a First Amended Master Long Form Complaint (Rec. Doc. 689) in order to correct the names of various Defendants who were incorrectly named in the original document. This amendment, however, did not affect the substantive counts of the original Master Long Form Complaint. Therefore, as Plaintiffs' First Amended Master Long Form Complaint is now the operative complaint in this MDL, this Court's Order pertains to Counts Two and Eight of Plaintiffs' First Amended Master Long Form Complaint.

Amended Master Long Form Complaint. Therefore, the PSC respectfully requested that this Court enter an order dismissing Counts Two and Eight in the First Amended Master Long Form Complaint and setting a deadline of two weeks to allow any individual plaintiff to amend her Short Form Complaint to allege facts supporting analogous state law claims that may be viable on an individual basis.

Accordingly, **IT IS ORDERED** that Count Two and Count Eight of Plaintiffs' First Amended Master Long Form Complaint are **DISMISSED**.

IT IS FURTHER ORDERED that an individual plaintiff shall have fourteen (14) days from the date of this Order to amend her Short Form Complaint to allege analogous state law claims that may be viable on an individual basis.

New Orleans, Louisiana, this 27th day of September 2017.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE



Taxotere - Order of August 30, 2017

Palmer Lambert

to:

Chynna Anderson

09/13/2017 09:46 PM

Cc:

Douglas Moore, John Olinde, "Jennifer_Rogers@laed.uscourts.gov", Dawn Barrios

Hide Details

From: Palmer Lambert <plambert@gainsben.com>

To: Chynna Anderson <chynna_anderson@laed.uscourts.gov>

Cc: Douglas Moore <dmoore@irwinllc.com>, John Olinde <olinde@chaffe.com>,

"Jennifer_Rogers@laed.uscourts.gov" <Jennifer_Rogers@laed.uscourts.gov>, Dawn Barrios <barrios@bkc-law.com>

Dear Chynna,

Our apologies to the Court and to Defendants' Liaison Counsel for the time of this email. Despite diligent efforts, the decision on whether the PSC should amend the Master Complaint or submit further briefing was recently made.

Plaintiffs, through the PSC, have considered the Court's Order of August 30, 2017, and have elected not to file an Amended Complaint related to the allegations supporting Counts II and VIII in the Master Long Form Complaint. The PSC is advising all non-PSC plaintiffs' counsel of this decision tomorrow.

Under PTO 15, individual Plaintiffs have the option to adopt allegations in the Master Complaint or to supplement those allegations. Individual Plaintiffs may yet be able to identify express statements or language that a Defendant may have communicated to them or their doctors. Therefore, the PSC respectfully requests that the Court enter an order dismissing Counts II and VIII in the Master Long Form Complaint and setting a deadline of two weeks to allow any individual counsel to amend an individual short form to allege facts supporting analogous state law claims that may be viable on an individual plaintiff basis.

Many thanks,
Dawn and Palmer

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Exhibit "A"